IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOMINIQUE DWAYNE GULLEY,

Plaintiff,

v.

JEROME A. SWEENEY,

Defendant.

OPINION AND ORDER

14-cv-321-wmc

Plaintiff Dominique Dwayne Gulley, also known as Ahmad Tyrek Razeak, is an inmate incarcerated by the Wisconsin Department of Corrections. Plaintiff filed this proposed action pursuant to 42 U.S.C. § 1983, challenging a restriction on his access to writing implements or pens. Gulley has already been found eligible to proceed *in forma pauperis,* and he has made an initial, partial payment of the filing fee in this case as required by the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b). Because plaintiff is incarcerated, however, the court is also required by the PLRA to screen the proposed complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A. In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, the court must deny leave to proceed further and dismiss this case for the reasons set forth below.

ALLEGATIONS OF FACT

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts. Gulley is presently confined at the Wisconsin Secure Program Facility ("WSPF") in Boscobel. Defendant Jerome A. Sweeney is the Security Director there.

On November 21, 2013, Gulley was transferred to the Wisconsin Resource Center ("WRC") from WSPF for the purpose of participating in a "coping skills" program. On January 27, 2014, while at WRC, Gulley received a conduct report for engaging in counterfeiting and forgery in violation of DOC Administrative Code 303.41. Gulley was found guilty as charged at a disciplinary hearing on February 3, and given 210 days of disciplinary separation or segregation time.

Gulley completed the coping skills program on February 7 and was returned to WSPF on February 27. The next day, Security Director Sweeney notified Gulley that he was being placed on "pen restriction" as a result of the conduct report received at WRC for misuse of a writing implement. (Dkt. # 1, Exh. 1). According to the notification, Gulley would be issued a "black crayon" and would not be allowed to use a pen or pencil except during law library time for pending cases only. This restriction remained in force for thirty days, subject to review by Sweeney. On March 24, 2014, Sweeney continued the restriction for another thirty days. (Dkt. # 1, Exh. 2).

Gulley maintains that the pen restriction was unwarranted because he did not meet the criteria found in WSPF Policy 900.536.03. According to Gulley, this policy states that a pen restriction is appropriate "when an inmate exhibits threatening, violent,

self-abusive or serious disruptive behavior . . . ." Noting that his conduct report was for forging documents, Gulley accuses Sweeney of maliciously imposing a "frivolous pen restriction" in violation of the Eighth Amendment's prohibition on cruel and unusual punishment. In that regard, Gulley contends that being on pen restriction has impeded his ability to write letters to his family and to work on educational materials in his cell.

OPINION

Section 1983 provides a private right of action for damages to individuals who are deprived of "any rights, privileges, or immunities" protected by the Constitution or federal law by any person acting under the color of state law. In order to find a defendant liable under § 1983, a plaintiff must establish that: (1) he had a constitutionally protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant intentionally caused that deprivation and (4) the defendant acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009); *Schertz v. Waupaca County*, 875 F.2d 578, 581 (7th Cir. 1989).

Gulley argues that the pen restriction constitutes cruel and unusual punishment in violation of the Eighth Amendment. The Eighth Amendment prohibits the "unnecessary and wanton infliction of pain" or the infliction of pain that is "totally without penological justification." *Hope v. Pelzer*, 536 U.S. 730, 737 (2001) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981)); *see also Hudson v. McMillian*, 503 U.S. 1, 5 (1992); *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976). For claims involving conditions of confinement, the question is whether prison officials acted with a culpable state of mind

to deny plaintiff the "minimal civilized measure of life's necessities." *Rhodes*, 452 U.S. at 347. In that regard, "a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Gulley has not begun to meet this threshold even on the face of his proposed complaint. Most superficially, the complaint is neatly written in pen, which indicates that he has been given access to a writing implement for purposes of submitting this lawsuit. More fundamentally, restricting Gulley's access to pens after having been found guilty of forging documents does not entail the unnecessary, wanton infliction of pain that is prohibited by the Eighth Amendment, especially when an exception has been made for legal documents. *Adams v. Pate*, 445 F.2d 105, 108-09 (7th Cir. 1971) ("temporary inconveniences and discomforts" do not constitute Eighth Amendment violations). Because Gulley's complaint is legally frivolous, the court will deny his request for leave to proceed.

ORDER

IT IS ORDERED that:

1. Plaintiff Dominique Dwayne Gulley's request for leave to proceed is DENIED and his complaint is DISMISSED with prejudice as legally frivolous.
2. The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g). (barring a prisoner with three or more "strikes" or dismissals for a filing a civil

action or appeal that is frivolous, malicious, or fails to state a claim from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical injury).

Entered this 25th day of June, 2015.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge